

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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UNITED STATES OF AMERICA and the  
COMMONWEALTH OF MASSACHUSETTS,

Plaintiffs, ex rel.

LISA WOLLMAN, M.D.,

Plaintiff-Relator,

v.

THE GENERAL HOSPITAL CORPORATION  
(d/b/a the Massachusetts General Hospital), THE  
MASSACHUSETTS GENERAL HOSPITAL'S  
PHYSICIAN'S ORGANIZATION and  
PARTNERS HEALTHCARE SYSTEM, INC.,

Defendants.

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Civil Action No. 15-11890-ADB

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

The General Hospital Corporation (d/b/a the Massachusetts General Hospital), the Massachusetts General Hospital's Physician's Organization, and Partners Healthcare System, Inc. (collectively, "MGH") hereby move this Honorable Court, pursuant to Federal Rule of Civil Procedure 56, for entry of summary judgment in their favor on the grounds that there are no material facts in dispute and MGH is entitled to judgment as a matter of law.

As set forth more fully in the accompanying Memorandum of Law, this motion should be granted for several reasons.

It is undisputed that Relator's assertion that MGH submitted false claims to the government for payment for orthopaedic surgeries based on allegedly inadequate informed consent of patients

is fatally flawed and fails as a matter of law. First, CMS previously rejected similar requirements to the ones Relator contends now apply. Second, the regulations and guidance relied on cannot form the basis of a false claim because they are not material conditions of payment. Third, the guidance in question was issued without the required notice-and-comment process and is thus not a proper basis for a False Claims Act claim under recent Supreme Court precedent.

Likewise, Relator's assertion that MGH submitted false claims for medically unnecessary anesthesia during overlapping orthopaedic surgeries fails. The assertion finds no support in any statute, regulation or administrative guidance and is based on a mistaken understanding of how Medicare applies the principle of medical necessity. Moreover, the undisputed material facts – some of which Relator herself testified to – demonstrate that this theory makes no practical sense under a plain reading and the structure of the anesthesia billing rules and related guidance.

Finally, Relator's claim that MGH filed false claims when it billed Medicare for overlapping surgeries in violation of Medicare guidance known as the Teaching Physician Rule should also be dismissed is contrary to the undisputed material facts. As with Relator's informed consent claim, this Teaching Physician Rule claim also relies upon guidance that purports to set substantive legal standards for billing beyond what is provided in the Medicare regulations that was issued without the statutorily required notice-and-comment process. Under recent Supreme Court precedent, the Teaching Physician Rule is therefore inadequate to serve as the basis for a False Claims Act lawsuit. The Teaching Physician Rule claim also fails because the undisputed evidence shows that MGH complied with the Rule in all material respects; to the extent MGH violated some aspect of the Rule, it did not do so with the requisite knowledge; and in any event, the alleged technical violations at the core of Relator's Teaching Physician Rule claim are not material to the government's decision to pay for the surgeries at issue.

The Court should therefore grant summary judgment in MGH's favor. MGH relies upon the accompanying Memorandum of Law in further support of its motion.

Dated: July 15, 2021

THE GENERAL HOSPITAL CORPORATION (d/b/a the Massachusetts General Hospital), THE MASSACHUSETTS GENERAL HOSPITAL'S PHYSICIAN'S ORGANIZATION and PARTNERS HEALTHCARE SYSTEM, INC.,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system on July 15, 2021, and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as unregistered participants.

/s/ Aaron Lang